HON'BLE SRI JUSTICE SAMUDRALA GOVINDARAJULU

S.A.No.423 of 1992

JUDGMENT:

This second appeal is filed by some of the legal representatives of the deceased plaintiff against reversing judgment and decree passed by the lower appellate Court. The plaintiff late Syed Khader Saheb filed the suit in the trial Court for declaration of title to the plaint schedule properties and for consequential permanent injunction. The plaint schedule consisted of 5 items namely Ac.0.90 cents, Ac.1.00 and Ac.0.15 cents in S.No.617 and Ac.0.26 cents and Ac.0.25 cents in S.No.618 of Timmasamudram village, Rayachoti Taluk, Kadapa District. All the items are classified as dry lands and are in patta No.467. The plaintiff based his claim for the suit properties on Ex.A.7 registered sale deed dated 11.06.1960 executed by SK.Kamal Saheb in his favour. Ex.A.1 is copy thereof. On the other hand, it is contention of the defendants that the plaintiff's vendor SK.Kamal Saheb had no right or title in the suit properties by the date of Ex.A.7 sale deed, as he relinquished the suit properties to Ghouse Sab, Ibrahim Sab and Hasan Sab (4th

defendant). The defendants 1 and 2 are sons of Ghouse Sab. The 3rd defendant is son of Ibrahim Sab. It is their further contention that after executing Ex.B.3 relinquishment deed, Kamal Sab left the village in the year 1943 itself. Alternatively, the defendants pleaded that they acquired title to the suit properties by adverse possession for over the statutory period and title of Kamal Sab if any, extinguished by the year 1960 when the plaintiff obtained Ex.A.7 sale deed.

2. The trial Court decreed the suit. As against the said decree, the defendants 5 and 6 who are two of the legal representatives of the 1st defendant filed appeal before the lower appellate Court. The lower appellate Court by the impugned judgment and decree, allowed the appeal and set aside the decree passed by the trial Court. As against the said decision of the lower appellate Court, some of the legal representatives of the plaintiff filed this second appeal. This Court by judgment dated 12.02.2004 allowed the second appeal on the ground that since one of the appellants in the lower appellate Court died and his legal representatives were not impleaded as parties to the appeal, the appeal stood abated and was accordingly dismissed as against the

said dead appellant and that therefore the lower appellate Court could not have allowed the appeal resulting in conflict of decisions insofar as the two appellants therein are concerned and that therefore the appellate decree is liable to be set aside. As against the said decision of this Court, the matter was taken to the Supreme Court by way of Civil Appeal No.5954 of 2004. The Supreme Court by order 10.09.2004 allowed the appeal, set aside previous judgment passed by this Court and directed this Court to decide the second appeal afresh in accordance with law.

3. In this appeal, the appellants' counsel apart from arguing the matter on merits, put forward the ground that the lower appellate Court should not have allowed the appeal insofar as one of the appellants therein was concerned, when the appeal stood abated as against another appellant as his legal representatives were not impleaded after his death. This Court is of the opinion that this ground of attack of the appellants' counsel is unsustainable in law. The appeal in the lower appellate Court was filed by the defendants 1 and 2 out of whom pending the appeal in the lower appellate Court, the 2nd appellant died. The defendants 1 and 2 have no conflict of interest in between

them and the plaintiff added them in the suit as defendants as they are sons of Ghouse Sab. The defendants 1 and 2 were on record as legal heirs of Ghouse Sab in whose favour Ex.B.3 relinquishment deed was executed by Sk.Kamal Sab. Even if the 2nd defendant is dead, the 1st defendant was validly representing the estate of Ghouse Sab in the suit.

4. The appellant's counsel placed reliance on **Sri Chand v Jagdish Pershad Kishan Chand**[1] and **Badni v Siri Chand**[2] of the Supreme Court and contended that the appeal before the lower appellate Court abates in its entirety and should have been dismissed in toto even as against living appellant as interest in the properties of both the appellants therein is joint and inseparable. But, in none of the said reported decisions, one of the two or several parties who died was survived by other parties representing the common estate.

5. On the other hand, the respondents' counsel placed reliance on **Mahabir Prasad v Jage Ram**[3] of the Supreme Court, wherein it was held that the fact that person jointly interested in decree has been made a respondent

and on his death, his heirs have not been brought on record, does not *per se* divest the appellate Court of its jurisdiction to pass decree in appeal under Order XLI, Rule 4 CPC. The Supreme Court rendered the said decision following its previous pronouncement in **Ratan Lal Shah v. Firm Lalmandas Chhadammalal**[4]. In **Sardar Amarjit Singh Kalra v. Pramod Gupta**[5], five Judges Bench of the Supreme Court held as follows:

> **"34.** In the light of the above discussion, we hold:
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> (*1*) Wherever the plaintiffs or appellants or petitioners are found to have distinct, separate and independent rights of their own and for the purpose of convenience or otherwise, joined together in a single litigation to vindicate their rights, the decree passed by the court thereon is to be viewed in substance as the combination of several decrees in favour of one or the other parties and not as a joint and inseverable decree. The same would be the position in the case of defendants or respondents having similar rights contesting the claims against them.
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> (*2*) Whenever different and distinct claims of more than one are sought to be vindicated in one single proceedings, as the one now before us, under the Land Acquisition Act or in similar nature of proceedings and/or claims in assertion of individual rights of parties are clubbed, consolidated and dealt with together by the courts concerned and a single judgment or decree has been passed, it should be treated as a mere combination of several decrees in favour of or against one or more of the parties and not as joint and inseparable decrees.
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> (*3*) The mere fact that the claims or rights asserted or sought to be vindicated by more than one are similar or identical in nature or by joining together of more than one of such claimants of a particular nature, by itself would not be sufficient in law to treat them as joint claims, so as to render

the judgment or decree passed thereon a joint and inseverable one.

(*4*) The question as to whether in a given case the decree is joint and inseverable or joint and severable or separable has to be decided, for the purposes of abatement or dismissal of the entire appeal as not being properly and duly constituted or rendered incompetent for being further proceeded with, requires to be determined only with reference to the fact as to whether the judgment/decree passed in the proceedings vis-à-vis the remaining parties would suffer the vice of contradictory or inconsistent decrees. For that reason, a decree can be said to be contradictory or inconsistent with another decree only when the two decrees are incapable of enforcement or would be mutually self-destructive and that the enforcement of one would negate or render impossible the enforcement of the other."

6. In that view of the matter, this Court is of the opinion that the lower appellate Court was not bound to dismiss the appeal insofar as living appellant is concerned, when the appeal stood abated and was dismissed insofar as dead appellant whose legal representatives were not impleaded in the appeal.

7. Coming to merits of the case, the plaintiff filed the suit on the basis of Ex.A.7 registered sale deed of the year 1960 executed by Kamal Sab who was one of the joint pattadars for a total larger extent of land along with 9 others. The defendants opposed the plaintiffs' claim on the basis of Ex.B.3 unregistered relinquishment deed of the year 1943

executed by the same Kamal Sab. No doubt, as both the Courts below rightly observed, unregistered document like Ex.B.3 will not convey valid title to the suit properties in favour of the persons who obtained the same. But, it is alternative contention of the defendants that they and their predecessors have been in possession and enjoyment of the suit site in their own right as against true owner Kamal Sab for over the statutory period of 12 years and therefore legal title of Kamal Sab in the suit properties became extinguished by virtue of Section 27 of the Indian Limitation Act, 1963. The lower appellate Court, on examination of oral and documentary evidence let in by the defendants, came to the conclusion that the defendants and their predecessors have been in continuous possession and enjoyment of the suit properties from the year 1943 continuously and that therefore their possession under an invalid document of title was adverse to the interest of Kamal Sab and that therefore they have acquired title to the suit properties by adverse possession for over the statutory period even before the year 1960 in which year the plaintiff's document Ex.A.7 came into existence. Therefore, Kamal Sab could not have validly conveyed any right or title in the

suit properties in favour of the plaintiff. PW.2 who is one of the attestors in Ex.A.7 sale deed admitted in his cross examination that Kamal Sab left the village about 17 years prior to execution of Ex.A.17 sale deed and was not in possession of the suit properties during the said period. PW.3 who is purchaser of Ac.0.05 cents out of Ac.0.25 cents in item No.5 of the plaint schedule under Ex.X.1 sale deed from the plaintiff, deposed that about 12 years prior to Ex.X.1 sale deed, he orally purchased the said Ac.0.05 cents from the defendants and after the plaintiff obtained Ex.A.7 sale deed in the year 1960, he obtained a formal sale deed like Ex.X.1 from the plaintiff also. He further says that in other portions of item No.5, there are other purchasers who built their respective houses after purchasing the same from the defendants. The lower appellate Court after going through the entire record in the right direction, rightly came to the conclusion that Kamal Sab had no subsisting right or title in the suit properties to convey the same to the plaintiff under Ex.A.7 registered sale deed. Thus, the plaintiff had absolutely no rights in the suit properties, in order to claim reliefs of declaration of title and consequential permanent injunction against the

defendants. I find no error or legal error in the judgment of the lower appellate Court; and I find that no substantial question of law arises for decision in this second appeal.

8. In the result, the second appeal is dismissed with costs.

SAMUDRALA GOVINDARAJULU,J

Dt.11th December, 2012
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[1] AIR 1966 Supreme Court 1427
[2] AIR 1999 Supreme Court 1077
[3] AIR 1971 Supreme Court 742
[4] AIR 1970 Supreme Court 108
[5] (2003) 3 Supreme Court Cases 272